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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re the Marriage of WYLMINA  
HETTINGA and TIMOTHY P.  
LOUMENA et al.

H041589  
(Santa Clara County  
Super. Ct. No. FL127695)

WYLMINA HETTINGA,

Appellant,

v.

TIMOTHY P. LOUMENA et al.,

Respondents.

Appellant Wylmina Hettinga claims that the family court's order that she pay \$210,000 in sanctions under Family Code section 271<sup>1</sup> to respondent Timothy Loumena was an abuse of discretion because the record does not support the court's finding that the sanctions order would not cause her unreasonable financial hardship. Because she has not provided an adequate record for review of this contention, we affirm the order.

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<sup>1</sup> Subsequent statutory references are to the Family Code.

## **I. Background**

Hettinga and Loumena have four children. Their dissolution action began in 2005, and Hettinga began appealing from the family court's orders in 2007. In 2008, the family court imposed \$100,000 in sanctions on Hettinga under section 271. At that time, the court informed Hettinga that "her conduct . . . could justify the imposition of more severe sanctions" and that the sanctions award "shall not preclude Respondent from renewing another request for sanctions under Family Code section 271 should Petitioner persist in conduct similar to that [for which these sanctions are being imposed]." Hettinga appealed from the 2008 sanctions order to this court and claimed that the family court had failed to consider whether the sanctions award would impose an unreasonable financial burden on her. In 2011, we rejected her contention and affirmed the sanctions order.

Hettinga was declared a vexatious litigant in 2009. Her vexatious conduct has never abated. She attempted to transfer her interest in the community residence to a corporation and filed a lis pendens on the property. She failed to pay child support, filed about 50 unsuccessful requests for family court orders, filed 18 appeals, and was found guilty of contempt after repeatedly violating restraining orders. Hettinga also filed five state lawsuits and two federal lawsuits against Loumena. In 2012, Hettinga purported to rent out to a third party the community residence, where Loumena, who had exclusive use and possession, was living with their children. She refused to cooperate in signing the documents necessary to complete the court-ordered sale of the community residence. The community residence was sold in May 2013, and the proceeds of \$494,957.73 were deposited in a trust account pending further court order. Hettinga made an unauthorized withdrawal of most of this money. Loumena's attorney had to go to great lengths to have this money restored to the account. Hettinga also took all of the funds in the children's trust accounts.

In September 2013, Loumena filed a request for sanctions under section 271. Hettinga has not included this request in the appendix upon which she proceeds on appeal. In October 2013, Loumena renewed his request for sanctions based on Hettinga's continuing "conduct frustrating settlement and promoting litigation" in the family law action. Loumena had paid \$251,623.49 in attorney's fees, including the \$102,000 in sanctions that Hettinga had previously been required to pay. He owed an additional \$279,618.94 in attorney's fees as of the end of September 2013.

The court held hearings on Loumena's sanctions request in October 2013 and June 2014. In August 2014, Hettinga filed an income and expense declaration in which she claimed that her income was \$800 a month and that her two teenage sons each had a monthly income of \$1,380. She asserted that her sons' income defrayed most of her monthly expenses of \$3,700.

In August 2014, the court issued a statement of decision concerning various matters including Loumena's sanctions request. The court expressly stated that its decision on Loumena's sanctions request was based on its review of "all of the over 30 volumes of the court file, as well as the exhibits and testimony submitted." It found that "further sanctions are warranted" because, since the prior sanctions award, Hettinga's "actions have continued unabated . . . ."<sup>2</sup> The court found that Hettinga had filed 50 unsuccessful motions, disobeyed numerous court orders, refused to pay child support, violated restraining orders, been found guilty of contempt, filed unmeritorious civil actions against Loumena and many appeals, and been uncooperative in facilitating the conclusion of this litigation. The court ordered her to pay \$210,000 "as and for attorney's fees as sanctions." The court explicitly found that the sanctions award "will not cause an undue financial hardship." It ordered that "[t]he sanctions payment shall be paid, if possible based upon the funds available, from Petitioner's share of the house sale

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<sup>2</sup> The statement of decision was followed by an October 2014 order.

proceeds which are currently held in trust as soon as possible.” Hettinga timely filed a notice of appeal from the court’s order.

## **II. Analysis**

Hettinga claims that the sanctions order must be reversed because the family court abused its discretion in finding that the award would not impose an unreasonable financial burden on her.

“An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction. . . . *The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed.*” (§ 271, subd. (a), italics added.) “A sanction order under Family Code section 271 is reviewed under the abuse of discretion standard. “[T]he trial court’s order will be overturned only if, *considering all the evidence* viewed most favorably in support of its order, no judge could reasonably make the order . . . .” [Citation.]’ [Citation.]” (*In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82, italics added; accord *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478.)

Hettinga cannot succeed in this appeal because she has not provided an adequate record. There are “three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.)

The family court’s sanctions decision was expressly based on “all of the over 30 volumes of the court file, as well as the exhibits and testimony submitted.” Hettinga has provided reporter’s transcripts of the family court’s hearings on October 16, 2013 and

June 18, 2014.<sup>3</sup> However, her one-volume appendix omits not only Loumena's September 2013 motion for sanctions and any evidence that may have been attached to that motion, but also six of the eight exhibits that were attached to Loumena's October 2013 trial brief. Instead of providing a complete record, Hettinga has elected to include only those items that she believes support her claims of penury. For instance, she includes her August 2014 income and expense declaration but no other evidence that might be in the family court's voluminous record concerning her financial condition.

In addition, Hettinga's assertions in her appellate brief regarding her financial condition either lack any citations to the record or are based on her unsupported claims below.<sup>4</sup> Without any citation to the record, she claims that she has incurred "what is undoubtedly a very large capital gains tax liability . . . ." Without any citation to the record, she asserts that she "is now left heavily indebted, and has the obligation of paying the capital gains tax on her net proceeds, an amount far beyond her means . . . ." Since she does not identify any record support for her assertions, we may properly disregard them. Hettinga cites to only her own word as support for her other assertions regarding her financial condition. Notably, the family court, as the trier of fact, was entitled to discredit her assertions of poverty, particularly since she had a history of misleading the court.

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<sup>3</sup> The court's order stated that there had been hearings on this matter on October 16, 2013 and June 18, 2014. For unknown reasons, Hettinga also includes a reporter's transcript of a hearing that predated Loumena's September 2013 sanctions request and a reporter's transcript of a hearing that postdated the court's order that she is challenging on appeal.

<sup>4</sup> Hettinga suggests that it was Loumena's burden to prove her "financial circumstances." She cites no authority for this proposition, and her failure to provide a complete record ensures that we would not be able to evaluate whether such a burden was satisfied in any event.

Because the appellate record provided by Hettinga is clearly incomplete, it would be impossible for this court to conclude that the family court's decision lacked an adequate basis in the record upon which that court based its decision. "Failure to provide an adequate record on an issue requires that the issue be resolved against the appellant." (*Defend Bayview Hunters Point Com. v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 859-860.) Hettinga's abuse of discretion contention must therefore fail.

### **III. Disposition**

The sanctions order is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.

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